mainland. When the defence was called, the appellants made a statement from the dock, averring that they were headed towards Pulau Kendi, where they were to dump the textiles for smuggling into Indonesia. No witnesses for the defence were called. This defence, such as it was, was duly considered by the learned president, sessions court, and for reasons, which to my mind were entirely cogent, was rejected by him. They were then convicted and sentenced to the minimum fine of $5,000.

The appeal against conviction was urged entirely on the ground that the learned president, sessions court, had not given due weight to the defence allegation that the sampan was going to Pulau Kendi and not to the mainland. It was an appeal against a finding of fact, depending on the credibility of the witnesses, and no reason being advanced that such finding was wrong having regard to the evidence, I would have no hesitation in dismissing the appeal.

However, it appeared on the record and it was confirmed by a statement from the bar, which I accepted, that counsel for the appellants made no submission at the close of the case for the defence. He had attempted to do so, but was prevented by the learned president, sessions court, for the reason that since the accused had merely made statements from the dock, they had not given any evidence, and their counsel was therefore not entitled to address the court, having regard to the provisions of section 184 of the Criminal Procedure Code (S.S. Cap. 21).

In ruling thus, the learned president, sessions court, was clearly following the decision of Smith J. in *Wong Heng Fatt* v. *Public Prosecutor* [1] which he, quite understandably, felt was binding on him.

In coming to his decision, Smith J. relied on the provisions of section 4(1)(a) of the Oaths and Affirmations Ordinance 1949 for the administration of oaths and affirmations to witnesses, and he accordingly held that since the accused in making a statement from the dock was neither sworn nor affirmed, he had not given any evidence.

With all respect, I find myself unable to agree. Section 4(1)(a) reads as follows:—

> "Subject to the provisions of section 5 of this Ordinance, oaths shall be taken by the following persons —
>
> witnesses, that is to say, all persons who may be lawfully examined, or give or be required to give evidence, by or before any court or person having, as mentioned in section 3 of this Ordinance, authority to examine such person or to receive evidence;".

Since an accused person can refuse to be examined or to give evidence under his undoubted right to elect to venture only a statement from the dock or to remain silent, he cannot come within the definition of "witness" in this Ordinance. He may well be a witness on his own behalf but this is only to say that he is a competent witness but he is never a compellable witness. As a witness, he cannot be administered an oath or an affirmation if he chooses to make a statement from the dock, but what he says therefrom comes fairly and squarely within the definition of "evidence" in the Evidence Ordinance. There "evidence" is defined in section 3 as including:—

> "All statements which the court permits or requires to be made before it by witnesses in relation to matters of fact under inquiry: such statements are called oral evidence;".

Having regard to this definition, I must differ, however regrettably, from Smith J. and hold that a statement from the dock is evidence, evidence for what it is worth but nevertheless evidence which thereafter entitles the accused or his counsel to address the court: see *Lam Heng* v. *R.* [2]

Failure to afford accused or his counsel an opportunity to address the court has been held to be a serious irregularity entitling the accused to a retrial: *Mahinder Singh* v. *Public Prosecutor.* [3] However in this case, counsel for the defence had previously made an address to the court and if he had not been shut out, he would have, quite clearly merely repeated his address. The learned president, sessions court, had in his grounds of decision fully considered the previous address of counsel for the accused. Having regard to these circumstances, I am of the opinion that the irregularity in this trial is curable under the provisions of section 448 of the Criminal Procedure Code, no failure of justice having, in my view, been occasioned.

The appeal is dismissed, the convictions and sentences are confirmed.

Appeal dismissed.

Solicitors: *Lim, Lim & Oon.*

MUNAH v. FATIMAH

[O.C.J. (Raja Azlan Shah J.) August 16, 1967]

[Kota Bharu — Civil Suit No. 109 of 1965]

Land Laws — Sale — Agreement to sell land under expectancy of title — Equitable owner — Failure to transfer to — Limitation.

Practice and Procedure — Trial — Default of appearance — R.S.C. 1957, O. 36 r. 31.

The plaintiff in 1946 entered into an agreement with the defendant and her brother, who were the beneficiaries to the estate of one Hamat, to purchase a piece of *padi* land, which was registered in the name of the deceased, for a consideration of $500. She went into occupation of the said land and cultivated it with *padi* and had since reaped the economic crops and enjoyed possession and profit without hindrance from the beneficiaries for a period of 19 years. She had also paid the annual quit rents for the land. She had repeatedly asked the beneficiaries to take out letters of administration in respect of the deceased's estate so that they could transfer

the said land to her, but they did nothing. After unsuccessful attempts by the plaintiffs to get the land transferred to her, she instituted these proceedings claiming *inter alia*, that the land in question be transmitted and registered in her name.

Held: (1) as from the time the plaintiff went into occupation she was the equitable owner of the said land. What was required now was to clothe the equitable estate with a legal title. She was therefore entitled to the relief claimed;

(2) in this case time did not run against the plaintiff as it was not that species of laches which would prevail against the equitable title.

Cases referred to:—

(1) *Kersah La'usin* v. *Sikin Menan* [1966] 2 M.L.J. 22.

(2) *Williams* v. *Greatrex* [1957] 1 W.L.R. 31.

CIVIL SUIT.

Dato' Wan Mustapha for the plaintiff.

C. Jegathesan for the defendant.

Raja Azlan Shah J.: The plaintiff claims that a piece of padi land held under Serial No. 44, Lot No. 140, Mukim Melor, Daerah Peringat, District of Kota Bharu, Kelantan, up till now registered in the name of Hamat bin Lembek (deceased), be transmitted and registered in her name, alternatively, for the return of the purchase price of $500, costs of this suit and any further or other relief as this court deems fit. The defendant is sued as administratrix of her father's estate, Hamat bin Lembek (deceased). The defendant failed to appear in court, though she was served with the notice of today's hearing. She has entered appearance and she has filed her statement of defence in which she denies the sale of the said land and claims that the plaintiff is a trespasser on the said land for a period of some 15 years; she also pleads limitation. The case comes within the provisions of Order 36 r. 31.

Briefly the plaintiff states that after the death of Hamat bin Lembek, his 2 beneficiaries, Said bin Hamat and Fatimah binte Hamat entered into an agreement with her to sell the said land for $500. That was in 1946. She duly paid the purchase price and went into occupation and planted padi on it and had since enjoyed possession and profit without objection from the beneficiaries. She had also paid the annual quit rents for the said land. She had repeatedly asked the beneficiaries to take out letters of administration in respect of the deceased's estate so that they could transfer the said land to her. The beneficiaries did nothing. One of the beneficiaries, Said bin Lembek had since died and it was only on 30th January 1954, the defendant applied and was granted letters of administration of her father's estate. After unsuccessful attempts by the plaintiff to get the said land transferred to her, she filed the writ in September, 1965.

I am satisfied that the plaintiff had entered into an agreement with the beneficiaries to purchase the said land for a consideration of $500, that she had entered possession and cultivated it with padi and had since reaped the economic crops and enjoyed possession and profit without hindrance from the beneficiaries for a period of 19 years. The plaintiff had also paid the quit rents.

The legal position is that there is an ordinary contract for the sale of land which is not subject to the consideration inherent in commercial contracts. Relying on the contract the plaintiff went into occupation and did such acts as were necessary and relevant to show that she was in possession. She never got off the land. As from that time, it seems to me, that she was the equitable owner of the said land. What is required now is to clothe the equitable estate with a legal title. She therefore seeks the aid of this court. In my opinion she is well entitled to the relief she claims. The law with regard to an agreement to sell land under an expectancy of title is discussed in my judgment in *Kersah La'usin* v. *Sikin Menan* [1] and I do not think I can profitably add to what I have there said.

I now order the defendant as administratrix of her father's estate to take all relevant steps to perfect the plaintiff's title. That is why the action is brought against the defendant in her representative capacity. In my view the case is properly brought against the defendant in her representative capacity.

There is the other point raised by counsel on behalf of the absent defendant, that is, that the action is time barred. Without going into unnecessary detail it is sufficient for me to say that the case of *Williams* v. *Greatrex*,[2] to which reference was made in *Kersah's* case, is against the defendant. It was there said that where a plaintiff is in possession of an equitable estate under a contract substantially executed, so that the object of his action is to clothe himself with the legal estate, time will not run at all as this is not that species of laches which will prevail against the equitable title.

There will therefore be judgment by default against the defendant with costs.

Judgment for the plaintiff.

Solicitors: *Wan Mustapha & Co.; C. Jegathesan.*